

## **Remarks**

This paper is submitted in response to, and is believed to be fully responsive to, the official Action mailed April 12, 2007 along with a petition for extension of time for three (3) months, and authorization for the Office to deduct the appropriate fees from Applicants' deposit account 13-4125. Therefore, it is believed that this response is timely filed.

The Examiner has required that the sequences shown in Figure 1 be listed in the sequence listing and that the sequences in Figure 1 be referred to at least in the Brief Description of the Drawing in the specification by their SEQ ID NO identifiers. A supplemental substitute paper copy of the Sequence Listing is therefore provided along with this response as well as a Computer Readable Form (CRF), and the paragraph in the specification corresponding to the Brief Description of the Drawing has been amended herewith to reflect the SEQ ID NO identifiers for the sequences shown in Figure 1. The amendment to paragraph [0023] of the specification as filed is fully supported by the specification as filed and no new matter is added. Consistent with the statement required under 37 CFR 1.825, the substitute paper copy of the Sequence Listing and the Computer Readable Form (CRF) provided herewith are the same, and no new matter has been added. It is respectfully requested that the Examiner enter this substitute sequence listing into the specification and find that its provision and entry overcomes the Examiners' objections. For clarity, the paper copy of the Sequence Listing referred to herein is an Adobe Acrobat PDF version of the Sequence Listing filed electronically, and the CRF copy of the Sequence Listing referred to herein is an ASCII text version of the Sequence Listing, also filed electronically, with the EFS-Web.

Claims 11-20 are pending in this case. It should be noted that in the previous response by the Applicant in this matter in which a response to the election/restriction requirement was filed on November 14, 2006, the Applicant failed to include claim 21 as a cancelled claim in the amendments presented therein and it appears that the Examiner has overlooked this as well. For purposes of placing this on record, it is being referenced here and above in the claims amendments. With this response, claims 11-12, 15-16, and 19-20 have been amended. The amendments are believed to be fully supported by the specification as filed and do not add new matter. It is respectfully requested that the Examiner enter the amendments and reconsider the claims in view of the amendments and the remarks provided below, and find that all of the claims are now in condition for allowance.

The Examiner found that claims 13-15 were allowable in this case and subjected all other pending claims to rejections under 35 USC 112 first and/or second paragraphs. Claims 12 and 20 were rejected under 112 second paragraph because the Markush grouping was improper. In reviewing the claims as a whole, the Applicant has also identified that claim 15, a claim deemed allowable by the Examiner, also contains an improper Markush grouping. With this response, the Markush grouping in

claims 12, 15, and 20 has been addressed and so these claims are now believed to obviate the 112 second paragraph rejection.

The Examiner rejected claims 11 and 16-20 under 35 USC 112, first paragraph as lacking enablement for a fungal cell as the host cell, and any plant pathogenic fungi other than Fusarium or Verticillium species. The Applicant traverses this rejection.

The amendment to claim 11 is believed to overcome the Examiner's rejection on this basis and so it is respectfully requested that the Examiner remove this grounds of rejection.

The amendment to claims 16 and 19 is believed to obviate the Examiners rejection of these claims on this grounds. Not all plant pathogenic fungi are included in the Markush grouping of claim 19, and the amendment to claim 16 results in the claim reciting only that the transgenic plant expressing SEQ ID NO:4 merely be more resistant to *a* fungal pathogen than a non-transgenic plant of the same species. Therefore, in view of these remarks and the amendments to the claims, it is believed that the 112 first paragraph rejection is obviated and so it is respectfully requested that the Examiner remove this grounds of rejection.

If there are any questions or minor amendments that can facilitate the allowance of the claims in this matter, it is respectfully requested that the Examiner contact the undersigned attorney.

Respectfully submitted,

/ Timothy K. Ball, USPTO Reg. No. 42,287 /

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